IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.23321-M of 2006

Date of Decision: August 21, 2007

Beg Raj and another

...Petitioners

VERSUS

State of Haryana

...Respondent

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Atul Lakhanpal, Advocate,
for the petitioners.

Mr.S.K.Hooda, Sr.DAG, Haryana,
for the State.

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RANJIT SINGH, J.

The powers of the police to further investigate the matter, in which report under Section 173 Cr.P.C. is submitted to the court, arise for consideration in this case. Petitioners have impugned the order passed by Addl.Sessions Judge, Sirsa, whereby the court has declined to accept the cancellation report filed by the police under

Section 173(8) Cr.P.C. upon further investigation of the matter, though earlier challan against the petitioners was filed. The petitioners have questioned the order mainly on the ground that the court is not justified in declining to accept the cancellation report only on the ground that matter was reinvestigated (so referred but should be further investigated) without permission of the court.

The facts, in brief, are that FIR under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, was registered against the petitioners on 13.1.2001 at Police Station Sadar, Dabwali. The allegations in the FIR would reveal recovery of alarmingly high quantity of poppy-husk of 100 bags loaded in a truck and hidden under the bags of DDT powder. This recovery was effected on the basis of an information given by the special informer, who had disclosed to the police that a truck bearing registration No.HYN-7766 was parked near Hotel of Ram Niwas Aggarwal, resident of Sagria and was having 100 bags of poppy-husk loaded therein and kept under the bags of DDT powder. As per the information, this truck was of Hans Raj Kamboj, resident of village Khairpur District Sirsa. It was further alleged that the truck owner alongwith his cleaner Rai Sahab (petitioner No.2) and Beg Raj (petitioner No.1) had brought this poppy husk in the said truck and all the four persons were statedly sitting in the said truck at the time of information. On receipt of this information, the police officials reached Hotel of Ram Niwas Aggarwal at Asha Khera and found the truck parked there. On seeing the police jeep, four persons sitting in the truck immediately jumped and fled towards the fields. Petitioners Rai Sahab and Beg Raj were known to SHO Randhir Singh as well

as to ASI Ram Kishan and were called by their respective names by the said police officials while they were running from the scene. On search of the truck, 100 bags of poppy husk, which were found loaded and hidden under the bags of DDT powder, were recovered. Each bag weighed 40 kgs., which were taken in possession. This led to investigation of the case. On completion of investigation, challan under Section 173 Cr.P.C. was filed and charge against accused Hans Raj was framed. The present petitioners Beg Raj and Rai Sahab could not be arrested and were declared proclaimed offenders. Hans Raj was granted anticipatory bail.

During the pendency of the proceedings against Hans Raj after filing of the challan and framing of the charge, as stated, the police took up the case for re-investigation against the petitioners without seeking any permission from the court. Having done so, SHO Police Station Sadar, Dabwali filed a report under Section 173(8) Cr.P.Cs. seeking cancellation of the case against the petitioners. Noticing these facts, Addl.Sessions Judge, Sirsa found this action of the police to be vitiated as the matter was re-investigated (or further investigated) without any permission from the court and accordingly rejected the cancellation report submitted by the police under Section 173(8) Cr.P.C. It would be worth noticing that charges against accused Hans Raj had already been framed and evidence was being recorded when cancellation report was filed. This order is impugned by the petitioners mainly on the ground that the court is not justified in rejecting the cancellation report simply on the ground that re-investigation was done by the police without taking permission from the court.

Mr.Atul Lakhanpal, the counsel appearing for the petitioners says that Section 173(8) Cr.P.C. provides clear power to the police to re-investigate (means further investigate) the case and as such the court was not justified in rejecting the cancellation report merely on the ground that the case was re-investigated by the police without seeking prior permission from the court. In support of his submission, the counsel has referred to the case of ***Hasanbhai Valibhai Qureshi v. State of Gujarat, JT 2004(4) SC 305 and Ram Lal Narang v. State (Delhi Admn.), AIR 1979 Supreme Court 1791.*** On the other hand, State counsel would urge that the police, no doubt, would have power to further investigate the matter, if some fresh facts came to light, but as per him, this can be done only after obtaining permission from the court. He has sought support for this proposition from the case of ***Ravikrindi Ramaswamy and another v. State of A.P., 2003(3) RCR (Criminal) 362.***

Section 173 Cr.P.C. regulates the procedure of filing report of police officer on completion of investigation. The officer in charge of the police station is required to forward a police report in the form prescribed to the Magistrate empowered to take cognizance as soon as he has completed the investigation. Section 173(3) then provides that where a superior officer of police has been appointed under Section 158, then the report in a case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police to make further investigation. Having made such a provision, Section 173(8) then provides as under:-

> "173. **Report of police officer on completion of investigation**.
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> 173(8). Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

A perusal of Section 173(8) would show that further investigation in respect of an offence after submission of a report under sub-section (2) is not precluded. Where the police officer carries further investigation and obtains further evidence oral or documentary, he is required to forward the same to the Magistrate a further report or reports in regard to such evidence in the form prescribed. No doubt, the police officers are not precluded from carrying out further investigation in respect of an offence after submission of a report under Section 173(2), but the question required to be seen is if this can be done by a police officer on his own or the same should be done after taking permission from the court. ***Hasanbhai Valibhai Qureshi's case (supra),*** which is relied

upon by the counsel for the petitioners, appears to have been decided in entirely different background. This was a case where a writ petition was filed seeking re-investigation of the case by an independent agency on the ground that local police had succumbed to the pressure exerted by a local MLA and had not investigated the case in a fair or straight forward manner. This writ petition was dismissed by Single Judge of the Gujarat High Court, which was impugned before the Hon'ble Supreme Court. The allegation in this case was to the effect that role of the prosecution agency was tainted with suspicion from the very beginning and there was a visible leaning in favour of the accused persons. In this context, the Hon'ble Supreme Court examined the question whether further investigation is warranted and it was noticed that hands of the investigating agency or the court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at truth. No doubt, the power to further investigate the matter is recognised even when the court has taken cognizance of the offence, but in this case Hon'ble Supreme Court did not deal with the issue of power of the police to further investigate the matter without taking the permission of the court, when it had already taken cognizance of the offence. This issue appears to have been directly addressed by the Hon'ble Supreme court in the case of ***Ram Lal Narang*** (supra). It is clearly held that further investigation by the police is not barred even when the Magistrate had taken cognizance of the offence. Noticing the provisions of the old Code, Hon'ble Supreme Court held that the police had a statutory right and duty to `register' every information relating to the commission of a cognizable

offence. The police also had the statutory right and duty to investigate the facts and circumstances of the case where the commission of a cognizable offence was suspected and to submit the report of such investigation to the Magistrate having jurisdiction to take cognizance of the offence upon a police report. It was also noticed that these statutory rights and duties of the police were not circumscribed by any power of superintendence or interference in the Magistrate; nor was any sanction required from a Magistrate to empower the police to investigate into a cognizable offence. In this regard, reference can also be made to the case of ***King Emperor v. Khwaja Nazir Ahmed, AIR 1945 Privy Council,*** where importance of judiciary not interfering with the police in matters, which are within the province of the police and into which the law imposed duty on them to enquire was stressed. In this case, the Privy Council observed as under:-

> "Just as it is essential that every one accused of a crime should have free access to a Court of justice, so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to

> interfere with those statutory rules by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Courts to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of Habeas Corpus. In such a case as the present, however, the Court's function begin when a charge is preferred before it and not until then....In the present case, the police have under Sections 154 and 156 of the Criminal Procedure Code, a statutory right to investigate a cognizable offence without requiring the sanction of the Court....”

It was noticed by the Hon'ble Supreme Court that there was no provision in the old Code prescribing the procedure to be followed by the police for further investigation, where, after submission of the report by the police under Section 173 Cr.P.C. and when the Magistrate had taken cognizance of the offence, fresh facts came to light. It was also noticed that there was no express provision prohibiting the police from conducting investigation upon fresh facts coming to light after submission of the report under Section 173(1) or after the Magistrate had taken cognizance. Many High Courts, as noticed by the Supreme Court, viewed that police was not barred from further investigation on the ground that report under Section 173

(1) had been submitted and the Magistrate had already taken cognizance of the offence. This view, however, was doubted by a few High Courts. In this background, Law Commission in its 41st report recommended that the right of police to make further investigation should be statutorily affirmed. The Law Commission said as under:-

> "A report under Section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report under Section 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the Magistrate concerned. It appears , however, that Courts have sometimes taken the narrow view that once a final report under Section 173 has been sent, the police cannot touch the case again and cannot reopen the investigation. This view places a hindrance in the way of the investigating agency which can be very unfair to the prosecution and, for that matter, even to the accused. It should be made clear in Section 173 that the competent police officer can examine such evidence and send a report to the Magistrate. Copies concerning the fresh material must of course be furnished to the accused."

It is in this background that new provision in the form of Section 173(8), reproduced above, was introduced in the Criminal Procedure Code.

It can be noticed that Madras High Court had recognised the right of police to make repeated investigations under the old

code. See ***Diwakar Singh v. A.Ramamurthi Naidu, AIR 1919 Madras 751*** where it was held as under:-

> "Another contention is put forward that when a report of investigation has been sent in under Section 173,Criminal P.C., the police has no further powers of investigation,but this argument may be briefly met by the remark that the number of investigations into a crime is not limited by law and that when one has been completed another may be begun on further information received."

In this regard, reference can further be made to the cases of ***Palaniswami Goundan, AIR 1946 Madras 502, Md.Niwaz v. The Crown, 1947 Cri.L.J. 774 and Prosecuting Inspector v. Ninaketan Mahato, AIR 1952 Orissa 350,*** where right of the police to investigate and lay further charge-sheet was recognised notwithstanding the filing of a final charge-sheet. It was also observed that the police had right to re-open investigation even after submission of the charge-sheet under the Criminal Procedure Code. In ***Rama Shankar v. State of U.P., AIR 1958 Allahabad 525,*** the court held that submission of a fresh charge sheet was not illegal. Similarly, Kerala High Court in the case of ***State of Kerala, 1973 Cri.L.J.1288*** recognised the right of the police to re-open investigation even after submission of the charge-sheet and further that there was no bar for investigation or for filing of supplementary report. In ***H.N.Rishbud v. The State of Delhi, (1955) 1 SCR 1150,*** possibility of further investigation was contemplated even where the

court had taken cognizance of the case.

The contrary view taken by some of the High Courts in this regard was also noticed by the Hon'ble Supreme Court, which was to the effect that with the submission of the charge-sheet under Section 173 Cr.P.C., the power of the police to investigate came to an end and the Magistrate's cognizance of the offence started. In this background, it was further observed that any further investigation by police would trench upon the magisterial cognizance. (See ***Ram Gopal v. State of West Bengal, AIR 1969 Cal 316).*** In ***Hunuman v. Raj, AIR 1951 Raj. 131,*** the action of the police in resuming investigation and putting up a new challan against a person not originally an accused as a result of the further investigation was held unauthorised and unlawful when the case was pending before the Magistrate. The Full Bench of this court in ***State V. Mehar Singh, ILR (1973) 2 Punjab and Haryana 561= 1974 Cri L.J. 970,*** held that the police became functus officio once the Court took cognizance of an offence on the filling of a charge-sheet by the police and thereafter further investigation by the police was not permissible. The police, it was said, could not 'tinker' with the proceedings pending in the Court. It was,however, observed that it would be open to the Magistrate to 'suspend cognizance' and direct the police to make further investigation into the case and submit a report. The Full Bench, while acknowledging the existence of the practice of submitting supplementary charge-sheet, was of the view that such practice was not sanctioned by the Code. The Bench further tried to find a solution to the problem of impracticality in banning of further investigation once cognizance of an offence was taken and

suggested the procedure of the Magistrate suspending cognizance and ordering further investigation. This view taken by the Full Bench of this court did not find favour with the Hon'ble Supreme Court in the case of ***Ram Lal Narang (supra),*** as can be seen from the following observations:-

> "The High Court of Punjab and Haryana acknowledged the existence of the practice of submitting supplemental charge-sheets, but was of the view that such practice was not sanctioned by the Code. Faced with the impracticality of banning all further investigation once cognizance of an offence was taken by the Court, the High court tried to find a solution to the problem by suggesting the procedure of the Magistrate suspending cognizance and ordering further investigation.
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> The procedure of suspending cognizance suggested by the High Court of Punjab and Haryana does not appear to us to be warranted by the provisions of the Criminal Procedure Code. The court went on to say:-
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> "Anyone acquainted with the day-to-day working of the criminal Courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the

notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial,he may direct the issue of process."

While dealing with the aspect of the criticism that further investigation by the police would trench upon the proceedings before the Court, the Hon'ble Supreme Court in the case of ***Ram Lal Narang (supra)*** held as under:-

"If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in

accordance with the provisions of the Code of Criminal Procedure in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceedings before the Court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation."

At the same time, the Hon'ble Supreme Court also addressed a word of `caution' by saying:-

"We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a Court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light."

Ultimately, the Hon'ble Supreme Court concluded by saying:-

"As observed by us earlier, there was no

provision in the Code of Criminal Procedure, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigation on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the Court by seeking its formal permission to make further investigation."

The above-noted observations of the Hon'ble Supreme Court, as such, is clearly laying the court procedure, required to be followed under the Criminal Procedure Code. As observed by the Supreme Court, in the interest of independence of the magistracy and the judiciary and in the interest of purity of administration of criminal justice and in the interest of comity of the various agencies, it would be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts

came to light in case where the Magistrate has taken cognizance. Even though the right of the police to carry out further investigation when new facts are revealed under Section 173(8) is well recognised, yet it has been held by the Hon'ble Supreme Court that such right of the police to further investigate the case where cognizance has been taken by the Magistrate should be subject to seeking formal permission from the court to make further investigation. Similar view has been taken by the Andhra Pradesh High Court by relying upon the judgment of ***Ram Lal Narang's case (supra)*** that final discretion in regard to further action is with the Magistrate and final word is sufficient to safeguard against any excess or abuse of power by the police to make further investigation.

The ratio of law in regard to the power of the police to carry out further investigation, thus, clearly emerges from the above mentioned view of law expressed by the Hon'ble Supreme Court. It can be summed up to say that police would have power to further investigate as is recognised in the form of Section 178(3) Cr.P.C., a newly introduced provision, but such powers given to the police in cases where cognizance has been taken by a Magistrate, desirable should be subject to a permission from the court when any fresh facts came to light. Any further investigation, thus, should generally be resorted to by the police only after seeking formal permission from the court in this regard and the police desirably should inform the court in this regard before conducting any further investigation.

Concededly in the present case, the police had conducted a further investigation without either informing the court and without taking permission from the court. It is rather alarming to

notice that the present petitioners, who were evading the cause of justice and had been declared proclaimed offenders could manage further investigation by the police and have an order of their innocence in their favour, which is filed before the court in the form of further report under Section 173(8) Cr.P.C. The allegation against the petitioners clearly is of an offence under Section 15 of the N.D.P.S.Act where recovery is of 100 bags of poppy husk. How could police act in this generous manner can only be explained by police?. No explanation otherwise is forthcoming. In how many cases, the police would act in this generous manner against proclaimed offenders can make one to sit up and take notice. The allegations of malafide or an unfair approach may not have been made, but may emerge from these startling facts, which appear to be peculiar to this case. These cannot be easily ignored. The observation of the Hon'ble Supreme Court that final say even after further investigation would that be of the Magistrate can be seen to operate in the facts and circumstances of the present case. The court is fully justified in declining the prayer made by the police in the impugned order. Obviously, the police was required to seek sanction or inform the court before conducing any further investigation into this case, more so when the petitioners continue to be the 'proclaimed offenders`, thus, evading the cause of justice. The present petition accordingly deserves to be dismissed and is so dismissed.

Before parting, I cannot resist from observing that the action of police in this case is required to be brought to the notice of the D.G.P.Police for him to look into the same and to see as to how and under what circumstances, the concerned police officer had

acted to hold further investigation of the case and given a clean chit to the petitioners, who are proclaimed offenders. The D.G.P. will ensure proper investigation into the case in regard to the conduct of the police officer and if it is found to be tainted or motivated or malafide in any manner, he would take further appropriate action against the said police officer.

August 21, 2007 (RANJIT SINGH)
ramesh JUDGE